Message

From: Ettinger, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=279D127BEF2F4B868EFD389D0A7B733E-ETTINGER, JOHN]
Sent: 6/25/2013 9:28:38 PM
To: Stephen D Pfeffer [Stephen.D.Pfeffer@usace.army.mil]
Subject: Chef Menteur: Notes from Discussion with Nick Dilks

Stephen,

Here are my notes on my conversation with Nick regarding my two Chef Menteur questions. Please don't hesitate to call if you would like to discuss this.

The sponsor is now requesting a 50% credit release prior to construction. They had earlier considered 30% (as a concession to IRT concerns with a higher release rate). However, they are now back up to 50% because that is the amount needed to qualify for HSDRRS mitigation. They believe that this increased risk is covered by the increased amount of money placed as financial assurances. I said that logically, financial assurances should match risk. But I also pointed out that the regulations state that the financial assurances need to be sufficient to ensure the mitigation work is completed. Thus, while I personally think it is logical that the financial assurances would only need to cover credits released, a strict interpretation of the regulations would dictate that 100% of the mitigation construction be covered – regardless of the percentage of credits released.

In response to a conversation with Rick and me, the sponsor is now proposing approximately $32k/acre in financial assurances. I think this is roughly twice what they had earlier proposed -- but still well below the average cost per acre developed by NMFS.

With respect to criteria for release of financial assurances (for construction), it is their intent to seek release after final elevations have been achieved (i.e., after two lifts and post-compaction). (This, in my opinion, is good.) Nick acknowledged that the current wording of the MBI might not be clear enough on that point.

I told Nick my gut reaction is that the Corps and IRT will be concerned with the request for 50% up-front credits and will also think that the $32k/acre is still too low.
The real problem here is that they are trying to please two masters (1) the regulatory program and (2) HSDRRS. Perhaps they should have two separate banks and MBIs: (1) Phase I for the regulatory program and (2) Phases II and III designed specifically for HSDRRS and which would evaporate/cease to exist if HSDRRS did not use the bank. I'm not sure how that would work, but again, the basic problem here is that they are trying to develop a bank for two somewhat different sets of rules and standards (though I would argue the standards should be the same…)

Finally, I told Nick that the IRT might meet later in July to discuss these issues. I said it might be good if they could join us for part of the meeting – to answer questions and explain their position. But, I will of course defer to you on that. I hope this is helpful.

If at any point I am interfering with your work on this bank, please don't hesitate to ask me to step back. After all, the Corps has the final authority and responsibility on the matter. I respect that.

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